



## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1255]

### **Certain Apparatus and Methods of Opening Containers; Commission Determination Not to Review an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") granting summary determination of violation of section 337 in the above-captioned investigation. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On March 18, 2021, the Commission instituted this investigation based on a complaint filed by Draft Top, LLC ("Draft Top") of Long Beach, New Jersey. 86 FR 14765 (Mar. 18, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), based on the

importation into the United States, the sale for importation, and the sale within the United States after importation of certain apparatus and methods of opening containers by reason of infringement of claim 12 of U.S. Patent No. 10,519,016 (“the ’016 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named nine respondents: KKS Enterprises Co., Ltd. of Hangzhou, China; Kingskong Enterprises Co., Ltd. of Hangzhou, China; Du Zuojun of Shenzhen, Guangdong, China; WN Shipping USA, Inc. of Inwood, New York; Shuje Wei of Pomona, California; Express Cargo Forwarded, Ltd. of Los Angeles, California; Hou Wenzheng of Hebron, Kentucky (collectively, the “Defaulting Respondents”); Mintiml of Yangzhou, Jiangsu, China; and Tofba International, Inc. (“Tofba”) of Hawthorne, California. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

On May 27, 2021, the Commission determined to terminate the investigation as to respondent Tofba based on withdrawal of the allegations in the complaint directed to Tofba. Order No. 6 (May 12, 2021), *unreviewed by* Comm’n Notice (May 27, 2021). On July 29, 2021, the Commission determined to find the Defaulting Respondents in default for failing to respond to the complaint and notice of investigation and failing to show cause why they should not be found in default. Order No. 8 (July 12, 2021), *unreviewed by* Comm’n Notice (July 30, 2021). On August 24, 2021, the Commission determined to terminate the investigation as to respondent Mintiml based on withdrawal of the allegations in the complaint directed to Mintiml. Order No. 9 (Aug. 11, 2021), *unreviewed by* Comm’n Notice (Aug. 24, 2021).

On August 20, 2021, Draft Top filed a motion for summary determination of violation of section 337 by the Defaulting Respondents, requesting issuance of a general exclusion order (“GEO”) and setting a 300 percent bond for any importations of infringing goods during the period of Presidential review. On September 17, 2021, Draft Top filed a supplement to its motion. That same day, OUII filed a response supporting Draft Top’s motion except on the issue

of bonding (OUII submits that a bond of 100 percent, not 300 percent, is appropriate). No Defaulting Respondent filed a response to Draft Top's motion.

On December 20, 2021, the ALJ issued the subject ID granting Draft Top's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) Draft Top satisfied the importation requirement as to the Defaulting Respondents; (ii) the Commission has subject matter, personal, and in rem jurisdiction in this investigation; (iii) the Defaulting Respondents' accused products practice claim 12 of the '016 patent; (iv) claim 12 of the '016 patent has not been shown invalid; and (v) Draft Top satisfied the technical and economic prongs of the domestic industry requirement as to the '016 patent. The ID also includes the ALJ's recommended determination on remedy and bonding, recommending that, should the Commission determine that violations of section 337 occurred, then the Commission issue a GEO and set a 100 percent bond for any importations of infringing products during the period of Presidential review. No petitions for review of the subject ID were filed.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's Federal Register notice. 87 FR 238-39 (Jan. 4, 2022).

Having reviewed the record in this investigation, including the subject ID, the Commission has determined not to review the ID's finding of violations of section 337.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks

exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial written submission, Draft Stop and OUII are requested to submit proposed remedial orders for the Commission's consideration. Draft Stop is further requested to identify the date the asserted patent expires, to provide the HTSUS subheadings under which the subject

articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on **February 17, 2022**. Reply submissions must be filed no later than the close of business on **February 24, 2022**. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1255) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or

(ii) by U.S. government employees and contract personnel,<sup>[1]</sup> solely for cybersecurity purposes.

All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on February 3, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: February 3, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

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<sup>[1]</sup> All contract personnel will sign appropriate nondisclosure agreements.